

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 10-1656 JB

NIDIA LIZZETT BATISTA-MARQUEZ,  
aka Lizzett Pena,

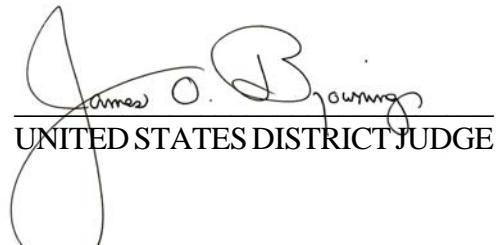
Defendant.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on the Defendant's Sentencing Memorandum, filed January 12, 2011 (Doc. 65). The Court held a sentencing hearing on January 13, 2011. The primary issue is whether the Court should sentence Defendant Nidia Lizzett Batista-Marquez to a time-served sentence. At the sentencing hearing, Batista-Marquez stated that she would like to amend her request for a sentence of unsupervised probation in her Sentencing Memorandum. Batista-Marquez stated that, after reflection, research, and conversations with the United States Probation Office ("USPO"), the remedy that she asked the Court to impose -- a period of one year unsupervised probation -- could not be legally applied in this particular case, because she is in the country illegally. She stated that it was her understanding that a more appropriate sentence in this case would be a sentence of time-served with an unsupervised period of supervised release. The Court has carefully considered the Presentence Investigation Report and the oral arguments made at the sentencing hearing, and, for the reasons stated on the record, and for further reasons consistent with those already stated, the Court grants Batista-Marquez' request for a time-served sentence.

**IT IS ORDERED** that Defendant Nidia Lizzett Batista-Marquez' request at the sentencing

hearing for a time-served sentence is granted. The Court will sentence Batista-Marquez to a sentence of 219 days in the custody of the Bureau of Prisons, or time served, whichever is less.



James O. Bowne  
UNITED STATES DISTRICT JUDGE

*Counsel:*

Kenneth J. Gonzales  
United States Attorney  
Norman Cairns  
Assistant United States Attorney  
Albuquerque, New Mexico

*Attorneys for the Plaintiff*

Martin Lopez, III  
Martin Lopez, III, P. C.  
Albuquerque, New Mexico

*Attorney for the Defendant*